

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

July 11, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Authorize the issuance of a Request for Qualifications / Request for Proposals for public lands at Ala Wai Small Boat Harbor, Cancellation of Revocable Permit Nos. B-03-06, B-93-39 and License 74 at Ala Wai Small Boat Harbor, Kalia, Honolulu, Oahu, Hawaii. Tax Map Key: (1) 2-6-010:005 & 016 and (1) 2-3-037:020

**APPLICANT:**

Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR)

**LEGAL REFERENCE:**

Sections 171-6, 16, 17, 18, 19, 35, 36, 41, 53, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

**SUBJECT PROPERTY:**

Portion of Government lands situated at Kalia, Honolulu, Oahu, identified by Tax Map Keys: (1) 2-3-037:020 and (1) 2-6-010:005 & 016, as shown on **Exhibits A, A-1 and A-2**, respectively. These parcels shall collectively be referred to hereinafter as the "Subject Property". Additional property information is summarized below.

	TMK 2-3-037:020* (see Exhibit A-1)	TMK 2-6-010:005* (see Exhibit A-2)	TMK 2-6-010:016* (see Exhibit A-2)
Land Area (sq ft)	15,199	28,394	9,975
State LUC	Urban	Urban	Urban
County Zoning	Waikiki Special District - Public Precinct	Waikiki Special District - Public Precinct	Waikiki Special District - Public Precinct
Trust Land Status	5(b)	5(a) and 5(b)	5(a) and 5(b)
DHHL 30% Entitlement	No	No	No
SMA	Yes	Yes	Yes
Shoreline Setback	Yes	No	Yes
Executive Order	Portion of EO 1795	Portion of EO 2575	Portion of EO 2575
Current Use	Fuel facility; convenience store	Boat repair/haul-out facility	Parking/storage
Current Tenant	Magic Island Petroleum Inc.	Ala Wai Marine, Ltd.	Ala Wai Marine, Ltd.

\*The TMK parcel numbers were issued by the City and County of Honolulu ("City") for real property taxes purposes only and do not necessarily reflect subdivided lots recognized by the City

Legal Access:

Public access to the Subject Property is provided over state fast and reclaimed (filled) lands that comprise the Ala Wai Small Boat Harbor ("AWSBH"), and Ala Moana Boulevard, which is a public right-of-way. However, staff's research of City and County of Honolulu records did not reveal any easements or other legal access from Ala Moana Boulevard to the Subject Property.

Current Use:

The Subject Property is managed by DOBOR as part of the AWSBH.

TMK (1) 2-3-037:020 is a portion of the acting Territorial Governor's Executive Order ("EO") No. 1795 to the Board of Harbor Commissioners for the Ala Wai Boat Harbor. Magic Island Petroleum, Inc. ("MIP") currently operates a fuel facility and convenience store on this parcel under Revocable Permit ("RP") B-03-06, effective December 1, 2002. The site and fuel facility are in poor condition and require substantial upgrades and repairs. MIP, however, has indicated it would be uneconomical to invest a substantial sum of money into the facility without a long-term lease.

TMK (1) 2-6-010:005 is a portion of EO No. 2575 to the Department of Transportation (Harbors Division) for "Addition to Ala Wai Boat Harbor". License 74 was issued by the Board of Harbor Commissioners to Ala Wai Boat Works, Ltd. on April 27, 1953 and expired on April 30, 2004. Ala Wai Marine, Ltd. ("AWM") operates a boat haul-out and repair facility on this parcel under the expired license as a hold-over tenant billed on a month-to-month basis.<sup>1</sup> AWM, however, has been cited by the Department of Health Clean Water Branch ("DOH") for discharge and permit violations, and earlier this year, DOBOR directed AWM to cease operations until AWM complied with DOH's requirements.<sup>2</sup>

TMK (1) 2-6-010:016 is a portion of EO No. 2575 to the Department of Transportation (Harbors Division) for Addition to Ala Wai Boat Harbor. Ala Wai Marine, Ltd. uses this parcel for parking and boat storage under RP Nos. B-93-39, (effective August 14, 1993).

**STATUTORY AUTHORITY:**

HRS Section 171-59(a) provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it.

The statute also provides a process under which the Board may select the lessee. The statute requires DLNR to: (i) provide public notice of its intention to lease public land through negotiation; (ii) establish reasonable criteria for the selection of the lessee; (iii) determine the applicants who meet the criteria for selection; and (iv) select the lessee that submits the highest offer. The full text of HRS Section 171-59(a) is attached as **Exhibit B**.

<sup>1</sup> Ala Wai Boat Works, Ltd. changed its name to Ala Wai Marine, Ltd. in 1966.

<sup>2</sup> AWM been operating without a National Pollutant Discharge Elimination System (NPDES) permit since December 31, 2003. In August of 2004, DOH issued a Finding of Violation to AWM for permit and discharge violations. On April 9, 2008, DOH issued another Notice of Violation to AWM after again finding AWM to be noncompliant.

### **CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:**

This action before the Board is a request for the authorization to issue a Request for Qualifications / Request for Proposals (“RFQ/RFP”) to select a prospective lessee for the Subject Property. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

However, the selected applicant shall be required to comply with all Chapter 343 environmental requirements regarding the applicant’s proposed use of the Subject Property. The issuance of a lease shall be subject to the issuance of a Finding of No Significant Impact (“FONSI”). If a FONSI is not issued and an Environmental Impact Statement (“EIS”) is required, the issuance of a lease shall be subject to the Board’s approval after the Board’s review of an accepted EIS.

### **BACKGROUND:**

The Subject Property is located within the AWSBH, which is the largest recreational harbor in the state and is situated at the Ewa end of Waikiki.

DOBOR has been implementing a comprehensive improvement plan for the AWSBH. As part of this plan, “F” Dock was completely rebuilt and placed into service in January 2008, and floating Docks “B”, “C”, and “D” are scheduled for replacement in September 2008. DOBOR is also upgrading the water system and beginning the design for upgrading the sewer system. Fixed piers on the 500, 600, and 700 row are also in the design phase and will be replaced in the near future.

DOBOR’s improvement plan also calls for other marina support facilities at AWSBH to be redeveloped and upgraded to improve the services provided to boaters. Part of DOBOR’s plans call for the Subject Property to be redeveloped to improve and upgrade the existing fuel and haul-out/boat repair facilities.<sup>3</sup> However, DOBOR does not possess the expertise or funding for this undertaking and believes these facilities should be upgraded under a lease arrangement with a private entity. In addition to upgrading the fuel and haul-out facilities, the redevelopment of the Subject Property by a private entity under a lease arrangement has excellent potential to increase the lease rent revenues generated to support DOBOR’s operations.

DOBOR intends to issue a lease that will require the lessee to provide for an improved/upgraded fuel facility and haul-out/boat repair facility. The lease will also allow the lessee to construct any other improvements and conduct any other operations that are permitted by the City and County of Honolulu for the Subject Property.

DOBOR believes the lease for the Subject Property should be awarded via a Request for Qualifications / Request for Proposals rather than via a public auction. DOBOR believes the RFQ/RFP process would better serve the public interest, the needs of DOBOR, and the boating public because the process will allow DOBOR to review and evaluate various factors of the applicants’ development proposal, whereas the public auction process would simply award the lease to the highest bidder. As a pre-condition to issuance of a lease, the applicant selected via the RFQ/RFP will be required to process any required environmental assessments or environmental

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<sup>3</sup> Redevelopment of the Subject Property may also require various repairs and maintenance, such as repairs to the bulkheads attached to the shore side of the properties and maintenance of the debris trap adjacent to the haul-out facility.

impact statements and obtain all required land use entitlements and governmental permits (e.g., a special management area permit).

In connection with the issuance of the RFQ/RFP and issuance of a long-term lease for the Subject Property, the existing agreements with Ala Wai Marine, Ltd., and the Magic Island Petroleum, Inc. will need to be terminated. Staff is requesting the Board authorize the cancellation of the revocable permits, the hold over status of the license agreement, and delegate the authority to the Chairperson to determine when the cancellations shall take effect.

#### **REQUEST FOR QUALIFICATIONS / REQUEST FOR PROPOSALS ("RFQ/RFP"):**

DOBOR contemplates that the RFQ/RFP process will be a two-step process as follows:

*Step 1: Request for Qualifications (RFQ).* The RFQ will request the submittal of an application and information from interested parties detailing their relevant development and management experience, a conceptual development plan, preliminary development budget, and evidence of the applicant's financial capacity. An evaluation committee selected by DOBOR will review the applications and determine which applicants meet the eligibility criteria. These qualified applicants will be eligible to participate in Step 2 of the process.<sup>4</sup>

*Step 2: Request for Proposals (RFP).* The RFP will request the submittal of a detailed development proposal for the Project from the qualified applicants, which proposals must include a fuel facility and a haul-out/boat repair facility. The development proposals must include a development plan for the Subject Property, evidence of the applicant's financial capacity to complete its proposed development of the Subject Property, and a lease rent proposal.<sup>5</sup> The evaluation committee will review the proposals and select the applicant whose proposal best satisfies DOBOR's development objectives and evaluation criteria. It is anticipated the evaluation criteria will include the quality of the proposed upgraded fuel and haul-out/boat repair facilities, the amount of lease rent the applicant proposes to pay, the applicant's development timetable, and any other public facilities/improvements/repairs the applicant proposes to provide.

The selected applicant and its development proposal must be approved by the Board at a Board meeting open to the public. Should the Board approve the selected applicant and proposal, the selected applicant and DLNR will commence exclusive negotiations of a development agreement and proposed lease for the Subject Property.

An outline of the overall process is provided as **Exhibit C**.

#### **PROPOSED DEVELOPMENT AGREEMENT:**

If approved by the Board, the selected applicant will need to undertake various predevelopment activities before a lease can be issued and construction can commence, e.g., due diligence; comply with HRS Chapter 343 requirements (i.e., EA/EIS); obtain a special management area permit from the City Council; and obtain subdivision approval to create legal lots and access. Therefore, a development agreement will be negotiated with the selected applicant, which agreement will set forth the predevelopment terms and conditions the selected applicant must perform (including payment of development agreement fees) in order for it to be issued a lease.

<sup>4</sup> DOBOR may, in its sole discretion, create a short list of the most qualified applicants, and only those applicants on the short-list will be eligible to participate in Step 2 of the process.

<sup>5</sup> The RFQ/RFP may allow applicants to propose to undertake certain improvements, repairs, or maintenance functions at AWSBH as part of their lease rent proposals. The RFQ/RFP may also allow proposals that provide for the leasing of submerged lands (e.g., for moorings) subject to the applicant acquiring all required approvals (see HRS §171-53).

**PROPOSED NEW LEASE:**

Character of Use: The Subject Property must include a fuel facility and a haul-out/boat repair facility, and may include any other use(s) allowed under the City and County of Honolulu zoning and special management area ordinances for the Subject Property.

Lease Term: Sixty-five (65) years

Minimum Annual Rent: To be determined by the selected applicant's proposal, but not less than the fair market rental, as determined by staff or independent appraisal, subject to review and approval by the Chairperson

**REMARKS:**

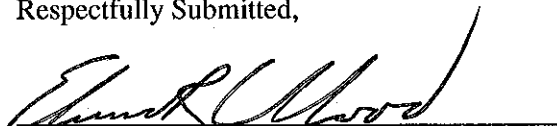
DOBOR has discussed the proposed redevelopment of the Subject Property with the Waikiki Improvement Association, whose response was favorable to modernization and upgrades to the AWSBH properties. DOBOR has also discussed the redevelopment plans with the current tenants of the AWSBH at its monthly harbor meetings and received favorable responses regarding the issuance of long term leases for the subject properties.

**RECOMMENDATION:**


That the Board:

1. Find that the public interest demands that a lease for the Subject Property be disposed of through negotiation pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended ("HRS").
2. Delegate the authority to the Chairperson to (i) issue a request for qualifications / request for proposals ("RFQ/RFP") consistent with HRS §171-59(a) for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) make a preliminary determination and recommendation to the Board of the best applicant.
3. Authorize the Chairperson to negotiate and approve any modifications to the RFQ/RFP process or requirements if in the best interest of the State and consistent with HRS Section 171-59(a).
4. Authorize cancellation of Revocable Permit Nos. Nos. B-03-06, B-93-39, and License 74 effective as of the date(s) to be determined by the Chairperson.

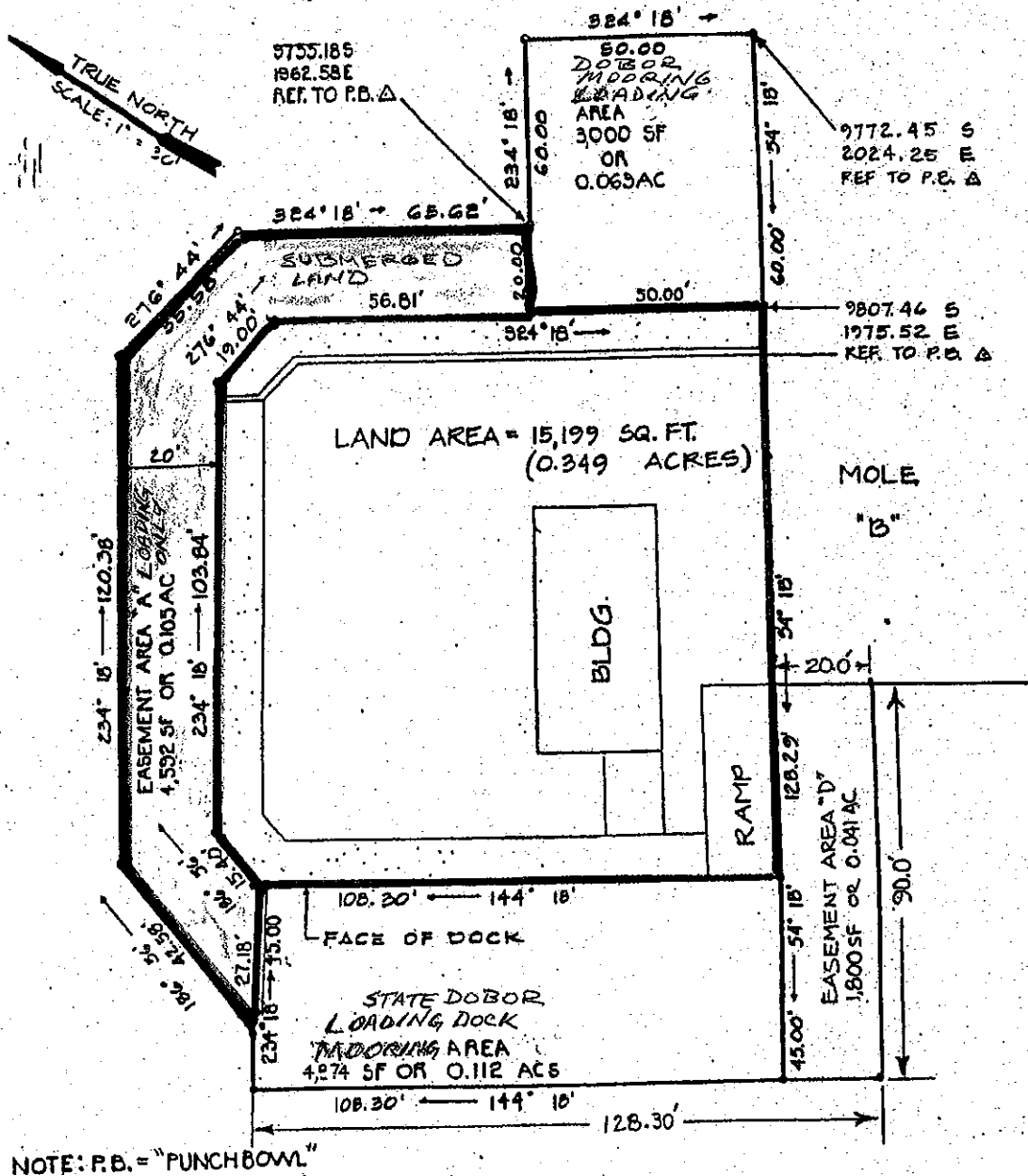
Respectfully Submitted,

  
Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:

  
Laura H. Thielen, Chairperson





LAND SITUATED AT ALA WAI BOAT HARBOR  
KALIA, WAIKIKI, HONOLULU, HAWAII  
BEING A PORTION OF GOVERNOR'S EXECUTIVE ORDER 1795  
DATED AUGUST 13, 1957





**HRS §171-59(a)**

**§171-59 Disposition by negotiation.** (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;
- (2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;
- (3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefore, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

## **OUTLINE OF PROPOSED PROCESS**

1. Board of Land and Natural Resources (the “Board”) authorizes issuance of RFQ/RFP<sup>1</sup>
2. DOBOR publishes notice of, and issues, RFQ/RFP
3. DOBOR (or an evaluation committee) reviews applicants’ submitted qualifications and determines which applicants meet the evaluation criteria
4. If more than one qualified applicant, DOBOR invites qualified applicants (or short list of qualified applicants) to participate in the RFP process and submit development proposals
5. DOBOR (or an evaluation committee) evaluates proposals and selects applicant that best satisfies DOBOR’s development objectives and evaluation criteria
6. DOBOR presents selected applicant/proposal to the Board for approval<sup>1</sup>
7. DOBOR and selected applicant enter into exclusive negotiations of a development agreement and proposed lease
8. DOBOR presents development agreement and proposed lease to the Board for approval<sup>1</sup>
9. DOBOR and selected applicant execute development agreement
10. Selected applicant undertakes due diligence and seeks necessary land use approvals and permits (e.g., EA/EIS and SMA processes)<sup>2</sup>
11. If selected applicant satisfies all terms/conditions of the development agreement, DLNR issues lease to selected applicant<sup>3</sup>

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<sup>1</sup> Board meetings are open to the public and public testimony will be accepted

<sup>2</sup> EA/EIS and SMP processes provide additional opportunities for public comment and participation

<sup>3</sup> If a FONSI is not issued and an EIS is required, the issuance of the lease will be subject to the Board’s approval after the Board has had the opportunity to review an accepted EIS